

August 07, 2017

National Credit Union Administration  
Gerald Poliquin, Secretary of the Board  
1775 Duke Street  
Alexandria, VA 22314-3428

RE: Comments on Appeals Procedures

Dear Mr. Gerald Poliquin,

I am writing on behalf of the California and Nevada Credit Union Leagues (Leagues), one of the largest state trade associations for credit unions in the United States, representing the interests of more than 250 credit unions and their approximately 10 million members/consumers.

The Leagues welcome the opportunity to provide comments to the National Credit Union Administration (NCUA) on their proposed rulemaking for appeals to the NCUA Board. Currently, procedures for obtaining a review are embedded in and scattered throughout NCUA's regulations and, in many cases, are slightly different from one another. In this proposed rule, the Board proposes to create new Part 746, Subpart B, which would provide a more uniform set of procedures to govern those rules in which an appeal to the Board is permitted.

The Leagues fully support the Board's plan to replace the appeal provisions spread throughout the regulations and instead cross reference the applicable rules to the new single, consolidated process for appeals. We believe this will result in improved clarity and understanding of the appeals procedures, which may result in increased usage by credit unions. While we support the proposed rule, we offer the following comments to further improve the appeals process.

### **Proposed Standardized Appeals Process**

#### Request for Reconsideration – Optional

Proposed Part 746.203 would set forth procedures for requesting reconsideration from a program office prior to filing an appeal with the Board. The Leagues agree this process can be a useful, relatively inexpensive, and efficient method of resolving most disputes. However, there are times when reconsideration from a program office can seem futile. The Leagues support the Board's proposal to make reconsideration from the program office an optional procedure.

#### Special Counsel Review of Appeals

Under the proposed rule, it is unclear how the Special Counsel's preliminary review under Part 746.205 works with their de novo review under Part 746.206. The final rule should clarify these procedures.

Under Part 746.205(a) the Special Counsel conducts an initial, preliminary review of all appeals filed with the Secretary of the Board and makes a recommendation for their disposition to the Board.

However, under Part 746.206(a) the Special Counsel is to conduct a de novo review, considering all pertinent materials provided by the program office and the petitioner in support of the appeal. The Special Counsel will make a recommendation to the Board as to the appropriate disposition of the appeal after having evaluated the applicable legal arguments and considered the facts and circumstances that pertain to the appeal.

It is unclear whether a recommendation for disposition is provided to the Board after the initial, preliminary review, or only after a de novo review. The final rule should clarify the purpose of the preliminary review and provide that the Special Counsel will make a recommendation for disposition only after conducting a de novo review.

#### Request for Oral Hearing - Timing

Generally, appeals are reviewed and determined by the Board on the basis of the written record. Proposed Part 746.207 sets out the process for requesting and conducting an oral hearing. A petitioner may request to appear before the Board to make an oral presentation in support of the appeal. This request must be submitted with the initial appeal documents in the form of a separate written document titled "Request for Oral Hearing." The request must show good cause for an oral presentation and state reasons why the appeal cannot be presented adequately in writing.

The Leagues encourage the Board to reconsider the timing of the request for an oral hearing and permit the request to be filed up until the final disposition. It is reasonable to believe that as the Special Counsel and the credit union work through the appeals process, perhaps providing supplemental materials, the credit union may determine an oral hearing is warranted. The credit union should be able to request an oral hearing at any point up until a final appeal decision is made by the Board.

#### Request for Oral Hearing - Representatives

When an oral hearing is granted, the petitioner must identify the individuals who will be representing them at the oral presentation. Under the proposed rule, the petitioner is limited to not more than two officers, employees, or other representatives (including counsel), unless otherwise authorized by the Chairman.

The Leagues suggest this limitation is too extreme. At a minimum, credit unions will likely want their Chief Executive Officer (CEO) and their Board Chairman present. In addition, the credit union will need experts in the subject matter, such as the relevant executive(s) overseeing the business unit involved in the appeal matter, as well as their legal counsel. The Board should permit the credit union to have the necessary individuals present to have an informed discussion. Should the Board determine a limit is necessary, we recommend the limit be no less than five representatives.

## **Conclusion**

The Leagues commend the NCUA Board for seeking to improve the appeal process. We believe credit unions will benefit from an improved process with greater clarity, flexibility, and transparency. We thank you for the opportunity to comment on the proposal and for considering our views. If you have any questions regarding our comments, please contact me.

Sincerely,

Diana Dykstra  
President and CEO  
California and Nevada Credit Union Leagues

cc: CCUL